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IN THE HIGH COURT OF SINDH KARACHI

Present:
Mr. Justice Naimatullah Phulpoto
Mr. Justice Mohammad Karim Khan Agha

Criminal Revision Application No.144 of 2015
Criminal Bail Application No.690 of 2016.
Criminal Bail Application No.1479 of 2016.

Waseem Yousuf Applicant	Through Mr. Khawaja Shamsul Islam, Advocate.
Amir Gul Applicant	Through Mr. Shaukat Hayat, Advocate.
Complainant State	Through Mr. Habib Ahmed Advocate Through Mr.Abrar Ali Khichi, APG
Date of Hearing:	28-11-2016
Date of Order:	20-12-2016

ORDER

Mohammed Karim Khan Agha, J. This criminal revision has been directed against impugned order dated 23.11.2015, passed by Anti-Terrorism Court (ATC) No.III, Karachi in Special Case No.389/2015, whereby the application under section 23 of the Anti Terrorism Act, 1997 (ATA) filed by the applicant has been dismissed.

2. Brief facts of the prosecution case are that on **06.08.2015** at about 1900 hours an FIR No.125 of 2015 under sections 386/419/420/170/34 PPC read with section 7 A.T.A. was registered at police station Frere, Karachi. It is in effect stated in the FIR that one letter was written by Zaman Khan to SHO stating therein that in the midnight of **18/19 June 2015 his son-in-law Muhammad Furqan** went out from the house in a car for some work and became missing in a suspicious manner, for which they inquired about his whereabouts on their own but they could not find him which left them in great misery. That on **August, 2015** the driver of his son-in-law namely Sabir told him that he knew the owner of Yousuf Motors namely Waseem Yousuf and he had told him about the entire incident who had then told him that they have relations with such kind of person and he will recover his

son-in-law, but in lieu of such recovery he was demanding a huge amount. For the purpose to prove this statement of the driver he on 05.08.2015 went to Motor Show Room of Yousuf Motors situated at Ch. Khaliq uz Zaman Road and met Waseem, who told him that with reference of his employee Amir, he has a friendship with one Colonel of Rangers Intelligence namely Col. Muhammad Khan alias Aseer ul Hasnain. Waseem further told him that they investigated that where his son-in-law is but they could not tell him, his Col. friend told him to arrange 2 crore rupees, then he will recover his son-in-law. The complainant told Waseem that he cannot arrange such huge amount, due to which he talked with his friend and he told him the final amount was 1½ Crore rupees, and he also told him to bring Rs.30,00,000/- and sit in his show room and at night they will bring his son-in-law. The complainant arranged 30 lacs from different places and on the next day i.e 06th August 2015 he alongwith the driver of his son-in-law namely Sabir reached Waseem's show room at 05 o'clock in the evening and told Waseem that he has arranged 30 lacs rupees which he has in his bag. He took the bag and sat in Waseem's office and asked Waseem to bring his son-in-law or else he would inform the law enforcement agencies. He was sitting in the showroom with the money bag when at about 7 o'clock in the evening one person came in the office of Waseem, who was introduced by Waseem as his friend and as Ranger's Col. Asirul Hasnain. He told Col Asirul Hasnain about the amount he has been brought in the bag and to bring his son-in-law then he will handover the remaining settled amount to him. Col Asirul Hasnain refused and **forcibly and by threatening snatched the money bag from him and left the office.** He made hue and cry and Waseem told him not to be annoyed as he will bring his son-in-law at night and the amount to be taken was very necessary because the Colonel had to handover the same to his high officers and to arrange the remaining amount and in this context Waseem was letting him wait for the whole night but at 6 o'clock in the morning Waseem told him that Col. Sahib has called him that due to some reasons it will take 1/2 days to arrange the release of his son-in-law and in the meantime he should arrange the balance of the settled monies. Each day Waseem made excuses and used delaying tactics. Then on 12th August 2015 he went to Waseem's showroom and told him that on account of the delaying tactics he wanted his **snatched money** back immediately otherwise he will take legal

action and will inform Rangers, on which Waseem told him to come tomorrow at 4 o'clock in the evening when he could take back his money. On the next day however when he went to Waseem's showroom Waseem was not present. He visited Waseem's showroom many times thereafter but Waseem remained absent from the showroom. **His claim is against Waseem and his friend Muhammad Khan alias Asirul Husnain for snatching amount of Rs.30/- lacs from him forcibly and committed cheating and fraud** on behalf of Rangers for damaging their reputation. His prayer is recovery of his money from them, arrest them and take legal action against them.

3. After usual investigation challan dated 15-10-2015 was submitted before the ATC U/S.386/419/170/34 PPC r/w 6(2) (k) and 7 (h) ATA

4. The applicant challenged the jurisdiction of the ATC under S.23 ATA by application dated 10-10-2015 seeking transfer of the case to the ordinary criminal court. The application was rejected by impugned order dated 23.11.2015 which found in material part as under:

> "I am not persuaded to agree with the learned advocate for the accused that this is simple crime having no nexus with the vires of sections 6&7 of Anti-Terrorism Act, 1997 or there was no terrorism involved in the subject incident. In this case the accused have falsely used the identity / name / designation of a Colonel and have created a sense of insecurity in the minds of public that Army personnel are also involved in the offence of kidnapping for ransom. To my best understanding the complainant gave 30,00,000/- to the accused because a Colonel was stated to be involved in the case. **The manner of offence is itself an attempt to undermine the society by spreading sense of insecurity to the effect that Army Personnel are involved in the offence of kidnapping for ransom. The act of the accused definitely created sense of fear and insecurity in the public in general. Same also destabilized the society at large and the case falls within the ambit Section 6/7 ATA, 1997.** Recovery of extorted money has also been affected. It is pertinent to mention that the son in law of the complainant has not yet been recovered. Perusal of statements of the witnesses so recorded by police prima facie shows that **the accused are the member of a organized / planned group** which by introducing as Colonel and his men **are extorting the money from the white collar businessmen.** The contention of the learned counsel for the applicant / accused that at the most this is a simple case of cheating has no force.

> 5. In the case of **Nazeer Ahmed and others versus Nooruddin and another** (2012 SCMR 517) a Two Judge Division Bench of the Hon'ble Supreme Court laid down following dicta:
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> "Neither motive nor intention for commission of the offence was relevant for the purpose of conferring jurisdiction of the Anti-Terrorism Court and it was the act which was designed to create sense of insecurity and / or to destabilize the public at large, which attracted the provisions of S.6 of the Anti-Terrorism Act, 1997."
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> In view of what has been discussed above I am of the view that the instant crime **having nexus with section 6(j) of Anti-Terrorism Act, 1997,** is to be proceeded by this Court having jurisdiction. The application in hand is, therefore, dismissed." (bold added)

5. It is against the above impugned order that learned counsel for the applicant has moved this criminal revision application. In short it is his submission that the facts and circumstances of this case do not attract the provisions of the ATA and as such the case should be tried before an ordinary criminal court. In particular learned counsel submitted that the trial court has seriously erred both in law and facts, that trial court has dismissed the application in a slipshod manner and without application of judicial mind, that the impugned order is illegal, perverse and unsustainable in law and all the case law which he had cited before the trial court in support of his case had not been considered and was simply ignored by the trial court as is apparent from the impugned order.

6. He further submitted that trial court failed to differentiate between the act of terror and the act of terrorism and has completely misunderstood the difference between the two. In fact in this case even if the allegations are accepted for the sake of arguments, the actus reus is not motivated to create fear and insecurity in the society at large but the same is actuated with the desire to commit a private crime against targeted individuals. In the present case neither any weapon has been used nor the complainant party has been put under any fear, therefore, the act does not come within the definition of terrorism. He next argued that the offense which the applicant has been charged with has no nexus with the sections 6&7 of the Anti-Terrorism Act which primarily require the sense of in security and fear in the common

mind which is lacking in present case. He also submitted that perusal of the FIR and the investigation conducted so far, nowhere disclosed any act of terrorism or any act which has nexus with sections 6 and 7 of the Anti-Terrorism Act and even the word 'Bhatta' used in the FIR has no legal implication as it is not the case of the complainant that any Bhatta was demanded from him but it is a case of simple cheating and misrepresentation and the provisions of section 386 PPC and/or section 388 are not at all attracted to the facts and circumstances of the present case and at best it may be a case of cheating, theft or robbery. As such for all the above reasons the case should be transferred to an ordinary criminal court for trial.

7. Learned counsel for the applicant in support of his submissions placed reliance on the cases of **Sagheer Ahmed v. The State and others** (2016 SCMR 1754), **Khuda-e-Noor v. The State** (PLD 2016 SC 195), **Ghulam Sarwar v. The State** (2013 YLR 1135, **Muharam Ali & others v. The State & others** (2016 P.Cr.L.J. 1961), **Ch. Bashir Ahmed v. Naveed Iqbal & 7 others** (PLD 2001 SC 521), **Wahid Bakhsh alias Wahidoo v. The State** (2016 P.Cr.L.J. 1989), **Rabnawaz v. Special Judge, Anti-Terrorism Court, Sargodha & 5 others** (PLD 2016 Lahore 269), **Ghulam Murtaza Jamali v. The State** (2011 YLR 2300), **Muhammad Yaseen alias Baba Ladla alias Baba v. The State** (2012 P.Cr.L.J. 170), **Muhammad Abdul Sadiq v. The State** (2004 P.Cr.L.J. 1288), **and Saeed Khan v. The State** (2011 YLR 1317).

8. On the other hand, learned APG and learned counsel for the complainant vehemently opposed the submissions made by the learned counsel for the applicant and fully supported the impugned order. In particular they submitted that once it was a case of collection of bhatta, which word according to them was mentioned in both the FIR and Challan, it automatically became a case which fell within the purview of the ATA. As such for all the above reasons they submitted that the impugned order may be upheld and the criminal revision application is liable to be dismissed. In support of his contention learned APG relied on the case of **Nazeer Ahmed V Nooruddin and another** (2012 SCMR 517) which was also reproduced above in the impugned order.

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9. We have considered the submissions of learned counsel for the parties, perused the record, considered the relevant law and case law cited by them at the bar.

10. In our view this does not seem to be a simplistic case. Apart from the aspect of whether the ATA is attracted there appear to be a number of other unusual/troubling aspects in connection with this case which we will briefly allude to but not go into great detail on. For example:

(a) That on 02-07-2015 Mst. Abida Begum filed CP 3926/15 before this Court alleging that on 18-06-2015 her husband Muhammad Ali Shaikh **was abducted along with Furqan Parekh (the son-in-law of the complainant in this instant case) by sensitive agencies** in the vicinity of Quaid-e-Azam international airport Karachi. This fact has not been denied by the complainant i.e. that his son-in-law was abducted along with Mohammed Ali Shaikh, rather it has been admitted in his evidence that this was the case, however no FIR was lodged by the complainant or any family member immediately after this incident. We accept that in kidnapping for ransom cases delay in lodging the FIR is neither unusual nor necessarily fatal to the complainant's case since the family are busy in looking for their loved ones. However a delay in lodging the FIR of nearly 2 months as in this case to us seems to lack credibility and does not seem to be understandable.

(b) The applicant has not been charged with kidnapping for ransom, nor was any application been made to amend the charge and yet the APG and complainant are relying on that offense along with the offense of collecting bhatta. Notably S.6 (2) (k) ATA (extortion of money ("bhatta")) found no place in the FIR but was later added in the challan.

(c) Rather strangely in the impugned order the trial court has found the crime having nexus with S.6 (j) ATA which concerns the burning of vehicles or any other serious form of arson which we can only assume to be a typo since this case does not concern such matters **and** finds that it is a case of kidnapping for ransom for which the applicant is not

charged. This is in spite of the fact that in the FIR the complainant describes the crime as one of cheating and fraud. The charge dated 29-7-2016 in effect charges the applicant of conspiracy to extort money from the complainant by putting him in fear of his death punishable under Section 386 PPC. No mention of any offense under S.6 ATA is made in the Charge. Even in his evidence the complainant mentions that the leather bag was forcibly snatched from him but does not mention any threat to his life. Likewise in his evidence he states that he reported to PS Frere about the robbery which took place in a small room in the premises of Yousaf Motor Company i.e. the place from where the bag was snatched. He also refers to the money as being extorted.

11. Turning to the main issue of whether the offense charged, based on the facts and the circumstances of the case falls within the purview of the ATA, it would in our view be useful to set out S.6 of the ATA which defines terrorism and is reproduced as under for ease of reference:

> **6. Terrorism-** (1) In this Act, "terrorism" means the use or threat of action where:
> (a) the action falls within the meaning of sub-section (2);
> (b) **the use or threat is designed to coerce and intimidate** or overawe the Government **or the public or a section of the public or community** or sect or a foreign government or population or an international organization **or create a sense of fear or insecurity in society; or**
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> (c) **the use or threat is made for the purpose** of advancing a religious, sectarian or ethnic cause or **intimidating and terrorizing the public**, social sectors, media persons, **business community** or attacking the civilians including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies:
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> Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.
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> (2) An "action" shall fall within the meaning of sub-section (1), if it:
> (a) involves the doing of anything that causes death;
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> (b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any other means;

(d) involves the doing of anything that is likely to cause death or endangers a person's life;

(e) **involves kidnapping for ransom, hostage-taking or hijacking;**

(ee) involves use of explosives by any device including bomb blast or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive;

(f) involves hatred and contempt on religious, sectarian or ethnic basis to stir up violence or cause internal disturbance;

(g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;

(h) involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the pubic, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) **involves extortion of money ("bhatta") or property;**

(l) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;

(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties.

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant.

(o) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or

(p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.

(3) The use or threat of use of any action falling within sub-section (2), which involves the use of firearms, explosives or any other weapon, is terrorism, whether or not sub-section 1(C) is satisfied.

(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.

(4) In this section "action" includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a "terrorist" means:

(a) An individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation facilitation, funding or instigation of acts of terrorism;

(b) An individual who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above."

12. It is apparent from a plain reading of S.6 that in order for an offense to fall within the purview of the ATA it must satisfy two separate limbs:

(a) Firstly, it must be shown that, based on the material on record, the offense falls within S.6(2) ATA.If the offense does not fall within S.6(2) the offense will not be one of terrorism and will not fall within the purview of the ATA. If the offense does fall within one of the categories of offense mentioned in S.6 (2) then to be regarded as terrorism and fall within the purview of the ATA it must **in addition**

(b) Secondly also satisfy the criteria in either S.6 (1) (b) or (c).If it fails to satisfy such criteria the offense will not fall

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within the purview of the ATA and as such will be triable by the ordinary criminal courts.

13. We are fortified in our above view by the recent decision of the Hon'ble Supreme Court in the case of **Khuda-E-Noor V The State** (PLD 2016 SC P.195) which held as under at P.196

> "Accused, in the present case, with the help of his co-accused murdered his sister. During the trial the prosecution improved its case vis-à-vis the motive and it was alleged that deceased was not enjoying good moral character as she had, developed illicit relation with someone and due to such reason she had been done to death by the accused. On the basis of such factor having become available on the record the Trial Court formed an opinion that the case in hand was one of honour killing and such killing amounted to "terrorism" within the purview of section 6(2) (g) of the Anti-Terrorism Act, 1997 and, thus, the case against the accused and his co-accused was transferred to an Anti-Terrorism Court.
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> Held, that present case was a case of a private motive set up in the FIR and during the trial the motive set up in the FIR was changed by the prosecution and an element of honour killing was introduced **but even that did not change the character of the offence which was nothing but a private offence committed in the privacy of a home with no design or purpose contemplated by section 6(1) (b) or (c) of the Anti-Terrorism Act, 1997. Allegations leveled against the accused and his co-accused in the present criminal case did not attract the jurisdiction of an Anti-Terrorism Court, thus, their case was to be tried by a court of ordinary jurisdiction."(bold added)**

14. The only 2 possible offenses, in our view, under S.6 (2) which may be applicable to this case are:

> 1. 6(2) (e) involves kidnapping for ransom (also covered in the Third Schedule of the ATA at 4(i)), hostage-taking or hijacking; and/or
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> 2. 6(2) (k) involves extortion of money ("bhatta") or property.

15. It is settled law that in order to consider whether an offense is made out under the ATA the material on record and the surrounding circumstances may be considered as was held in the case of **Mohabbat Ali V State** (2007 SCMR 142) which held as under in this respect at P.145 Para 8:

> "8.In order to determine as to whether an offence would fall within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations made in the

FIR, record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence has any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act is to be seen. It is also to be seen as to whether the said Act has created a sense of insecurity in the public or any section of the public or community or in any sect."

16. We also have to keep in mind that the provisions of the ATA have to be construed very strictly and any benefit in interpreting such provisions would be given to the accused as was mentioned in the case of **Umer Farooq V Judge ATC Mirpurkas** (2014 P.Cr.LJ 1052) wherein it was held as under at P.1059 Para10:

"10. **We may further observe that the provisions of Anti-Terrorism Act, 1997 are required to be construed strictly and the benefit, if any, arisen in that regard, has to be extended to the accused** whereas, in the absence of the element of terrorism, sense of insecurity in public at large and gravity of section 6, the provisions of section 6, 7 and 8 of Anti-Terrorism Act, 1997 could not be attracted in each and every case. Reference in this regard can be made to the Judgment of the Hon'ble Supreme Court of Pakistan in the case of *"Bashir Ahmed v. Muhammad Siddique and others"* reported in PLD 2009 Supreme Court 11 and to the Judgment of Lahore High Court in the case of *"Taj Muhammad v. Judge, Anti-Terrorism Court and another"* reported in PLD 2003 Lahore 588"

17. In our view, based on the material on record, it is quite apparent that the ingredients required to meet the definition of "kidnapping for ransom" as laid down in S.2 (n) ATA are lacking in this case and have not even been charged. As such in our view, based on the material on record, only S.6 (2) (k) involving the extortion of money ("bhatta") **may** be applicable although we consider even this to be doubtful. "Bhatta" is not defined in the ATA and thus in our view reliance on the ingredients of extortion as set out in the PPC are likely to be applicable and seems to have been used as a yardstick by the superior Courts and it will be for the relevant trial court to determine whether these ingredients are made out or some other offense under the PPC based on the material on record

18. Even if this limb of S.6 (2) is made out i.e. S.6 (2) (k) (involving the extortion of money ("bhatta")) then either S.6 (1) (b) or (c) would also need to be satisfied based on the facts and

circumstances of the case and material on record to bring the offense within the purview of the ATA especially as from the material on record there does not seem to have been any direct threat by firearm so as to attract S.6(3) and thereby exclude S.6(1) (c) although one of those involved in the offense may have been armed. The money bag, it appears from the record, was snatched rather than handed over after being threatened with a firearm. Certainly no firearm was said to be pointed at the complainant let alone discharged and only one person on his own snatched the money bag and no other armed persons were with him at such time. **Significantly the evidence of the complainant has also been recorded before the ATC and he has deposed that the accused have committed robbery.**

19. This Court in the recent **Cr.RA 60/2015 Kamran @ Doctor & Another V State dated 16-05-2016** (approved for reporting) and **Cr.RA 61/2015 Muhammed Rashid @ Master and Another V State dated 16-05-2016** (SBLR 2016 Sindh 1347) of which one of us was a member (Mohammed Karim Khan Agha J) had examined in detail the question of what crimes/offenses fell within the purview of the ATA along with the necessary actus reus and mens rea.

20. We set out our discussion of the law in **Kamran's case** (Supra) in respect of intent in respect of whether an act could amount to terrorism under S.6 (1) (b) and (c) for ease of reference which we consider to be the correct law in connection with the aspect of intent:

> "17. Later in 2012 in the case of **Nazeer Ahmed V Nooruddin** (2012 SCMR P.517) it was observed by a two member bench of the Hon'ble Supreme Court that no intent to cause terror was required to bring an act within the ambit of the ATA and that it could even include cases of personal enmity provided that the act created a sense of fear or insecurity in society.
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> 18. This position regarding intent and mens rea in cases under the ATA has recently been examined by a three member bench of the Hon'ble Supreme Court in the case of **Shahbaz Khan V Special Judge Anti Terrorism Court Lahore** (PLD SC 2016 1) whereby it was held as under at P.6.
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> > "7. It is clear from a textual reading of Section 6 of ATA that an action categorized in subsection (2)

thereof constitutes the offence of terrorism when according to Section 6(1)(b) *ibid* it is "designed" to, inter alia, intimidate or overawe the public or to create a sense of fear or insecurity in society. Therefore, the three ingredients of the offence of terrorism under Section 6(1) (a) and (b) of ATA are firstly, taking of action specified in Section 6(2) of ATA; **secondly, that action is committed with design, intention and mens rea; and thirdly, it has the impact of causing intimidation, awe, fear and insecurity in the public or society.**

19. In dealing specifically with the question of mens rea the Hon'ble Supreme Court at P.9 found as under:

> "11. Primarily, the rule laid down in **Bashir Ahmed's** case *ibid* requiring the ascertainment of the design, intention and *mens rea* of an act for establishing the jurisdiction of a learned ATC rests on dicta given in **Mehran Ali's** case *ibid*. However, **Bashir Ahmed's** case *ibid* does not consider the ways and means by which the design, intention or *mens rea*, for an act of terrorism, requiring in essence the proof of an assailant's state of mind, should be ascertained by a Court of law. Whether the Court should mechanically consider the motive alleged by a complainant in the FIR to be decisive or should it also scrutinize other aspects of an occurrence to assess if the culprits had any design, intention or *mens rea* to commit a terrorist act?
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> 12. In most cases, the nature of the offences, the manner of their commission and the surrounding circumstances demonstrate the motive given in the FIR. However, that is not always the case. **When offences are committed by persons with impunity disregarding the consequence or impact of their overt action, the private motive or enmity disclosed in the FIR cannot be presumed to capture their true intent and purpose. In such cases, it is plain that action taken and offences committed are not instigated "solely" by the private motive alleged in the FIR.** It is settled law that intention, motive or *mens rea* refer to the state of mind of an offender. It is equally well established that a state of mind cannot be proven by positive evidence or by direct proof. **The intention of an accused for committing an offence is to be gathered from his overt acts and expression.** It has been held in the case of **State v. Ataullah Khan Mangal** (PLD 1967 SC 78) **that an accused person "must be deemed to have intended the natural and inevitable consequences of his action."** Thus apart from the overt acts of the accused, the injuries caused by him or consequences ensuing from his actions, and the surrounding circumstances of the case are all relevant to ascertain the design intention or *mens rea* that instigated the offences committed. These principles are enunciated in **Zahid Imran v. The State** (PLD 2006 SC 109) and **Pehlwan v. Crown** (1969 SCMR 641).

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Intention is presumed when the nature of the act committed and the circumstances in which it is committed are reasonably susceptible to one interpretation. In such event, the rule of evidence that the natural and inevitable consequences of a person's act are deemed to have been intended by him is applicable: **Jane Alam v. The State** (PLD 1965 SC 640). In **Muhammad Mushtaq v. The State** (PLD 2002 SC 841) the inevitable consequence of an act was considered as its design.....

13. **When wanton overt acts committed by an accused lead to horrendous consequences then the motive given in the FIR merely indicates the background. The presumption that the natural and inevitable consequences of the acts of an accused are deemed to be intended, provides a reliable touchstone for gathering the design, intention or *mens rea* of an assailant in the context of Section 6(1)(b) of ATA.** (bold added)

20. Thus, as can be seen from the latest judgment of the Hon'ble Supreme Court it is not necessarily the brutality or scale of the crime which elevates it to fall within the purview of the ATA but to an extent the intention behind the act which can be inferred from the particular facts and circumstances of each case and may even include personal disputes and enmities which escalate to such an extent that the act can be inferred as per para 6(b) ATA to be designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or as per S.6 (1) (c) is made for the purpose of advancing a religious, sectarian or ethic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies.

21. In our view therefore, based on the latest Supreme Court authority, on this issue it is still the *intent/mens rea,* although perhaps wider/more liberal in interpretation, behind the act which can be inferred from the facts and circumstances of the particular case which is one of the many factors for determining whether or not a case of murder is an ordinary case of murder to be tried by the ordinary criminal courts or a case of murder which would amount to terrorism and which would come within the ambit of the ATA".

21 It would appear to us that as per the impugned order one of the main reasons which the learned trial Court Judge thought brought the case within the ambit of the ATC was as follows as per the impugned order:

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"The manner of offence is itself an attempt to undermine the society by spreading sense of insecurity to the effect that Army Personnel are involved in the offence of kidnapping for ransom. The act of the accused definitely created sense of fear and insecurity in the public in general. Same also destabilized the society at large and the case falls within the ambit Section 6/7 ATA, 1997"

22. Based on the material/evidence before us and the current law on terrorism we cannot agree with such a conclusion. In this case the material before us reveals that this was not a case of extortion of money triable by the ATC. It may be true that the applicant attempted to mislead the complainant by using the name of the rangers in attempting to extract money from the complainant but importantly this offense took place in secret in a small private room and was not within the public's knowledge and no uniforms were even worn to indicate that any ranger personnel were involved. The public had no idea that unscrupulous persons may be using the name of the rangers to create a sense of fear or insecurity in society or amongst the business community by suggesting that the rangers were involved in extortion or kidnapping for ransom and thus the act could not have had the impact of causing intimidation, awe, fear and insecurity in the public or society. In fact the complainant himself does not even seem to have been extra fearful simply because rangers personnel may have been involved in the matter as he even threatened to report the whole affair to the rangers himself if his money was not returned. The material on record tends to show that this matter involved the complainant and the applicant and the other accused alone and not the public at large which act did not intimidate or terrorize the business community or the public at large who remained completely unaware of it.

23. Furthermore, there does not even appear to be any intent which can be inferred from the material to suggest that the act was designed to terrorize the general public or society at large.

24. In reaching such a conclusion we are further fortified by the recent Supreme Court case of **Sagheer Ahmed V State** (2016 SCMR 1754), which was also a case concerning the collection of bhatta and whether such case should be heard by the ATC or an

ordinary criminal court, which up held the decision of the High Court that the case should be tried by an ordinary criminal court as opposed to the ATC under the ATA in the following terms at P.1755 at Para 3,

> "3. High Court in the impugned judgment has observed as follows:
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> > 11. Cumulative effect of the averments of FIR, surrounding circumstances and other material available on record have replicated that offence having been committed on account of previous old enmity with a definite motive. The alleged offence occurred at Faiz Wah bridge, which is not situated in any populated area, consequently, the allegations of aerial firing have not been appeared to us to be a case of terrorism as the motive for the alleged offence was nothing but personal enmity and private vendetta. **The intention of the accused party did not depict or manifest any act of terrorism as contemplated by the provisions of the Anti-Terrorism Act, 1997. Consequently, we are of the considered view that complainant has failed to produce any material before the Investigating Officer that at the time of occurrence sense of fear, panic, terror and insecurity spread in the area, nevertheless it was a simple case of murder due to previous enmity, thus, alleged offence does not fall within purview of any of the provisions of Anti-Terrorism Act, 1997. While probing the question of applicability of provisions of Anti-Terrorism Act, 1997, in any crime, it is incumbent that there should be a sense of insecurity, fear and panic amongst the public at large to invoke the jurisdiction of the Anti-Terrorism Court. Indeed, in each murder case there is loss of life which is also heinous crime against the society but trial of each murder case cannot be adjudicated by the Anti-Terrorism Court, except existence of peculiar circumstances as contemplated under sections 6, 7, 8 of the Anti-Terrorism Act, 1997."** (bold added)
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> > 4. We note that observation made by the High Court is based upon the record of the case and no misreading in this respect was pointed out before us. The submission of learned counsel for the petitioner that in evidence petitioner has brought on record sufficient material to substantiate the fact of demand of Bhatta in FIR that complainant party was doing business of brick kiln business. Be that as it may, we find that High Court has rightly dealt with the matter and prima facie there is nothing on record to deviate from the same. The petition is, therefore dismissed and leave refused."

25. In this respect concerning the collection of bhatta as an offense under the ATA reference to the case of **Muhram Ali V State** (2016

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P.Cr.LJ 961) which made similar findings on the collection of Bhatta not falling within the ATA as **Sagheer**'s case (Supra) is also of assistance.

26.Even in the recent case of **Abdul Nabi V The State** (Criminal Appeal No.59 of 2011) dated 28-11-2016 which concerned a case of gang rape which was tried under the ATA the Hon'ble Supreme Court held as under at P.2 Para 3:

> "3.After hearing the learned counsel for the parties and going through the record we have observed that the case in hand was not a case of terrorism but was a case of private offense committed in secrecy. **The "design" or "purpose" provided for by S.6 of the Anti-Terrorism Act 1997 were non existent in the present case and apparently there was no intention on the part of the appellant to create sense of fear or insecurity in the public at large"** (bold added)

27. Thus, based on the above discussion, we find that this is **not** a case of extortion of money ("bhatta") falling within S.6(2) (k) ATA since with respect to the offense of extortion of money ("bhatta") neither the ingredients of S.6 (1) (b) or (c) ATA have been made out and as such this case does **not** fall within the ambit of the ATA 1997

28. Thus, the criminal revision application is allowed. The impugned order is set aside and the ATC hearing this case shall return the case to the concerned ordinary criminal court with immediate effect in accordance with law. With regard to the bail applications these relate to the ATC case which is no longer in the field. The applicants may however if so advised move fresh bail applications before the concerned court having jurisdiction in the matter. In view of the above the bail applications stand disposed of

Dated 20-12-2016